

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

THEODORE A. FATH, JR., an)	
Individual,)	
)	
Plaintiff,)	Case No.: 14-CV-600-CVE-FHM
)	
v.)	
)	Jury Trial Demanded
DRIVE CLEAN MANAGEMENT,)	
LLC, d/b/a BOOMERANG)	
CARWASH, an Arkansas limited)	
liability company,)	
)	Attorney Lien Claimed
Defendant.)	

COMPLAINT

COMES NOW, Plaintiff, THEODORE A. FATH, JR (“Plaintiff”), by and through the undersigned counsel, and for his cause of action against Defendant, DRIVE CLEAN MANAGEMENT, LLC, d/b/a BOOMERRANG CARWASH (“Defendant”), alleges and states as follows:

Parties

1. The Plaintiff, Theodore A. Fath, Jr., is an adult male citizen of The United States and resident of Broken Arrow, Tulsa County, Oklahoma, which is within the United States District Court for the Northern District of Oklahoma, and at all relevant times herein was an employee of Defendant.
2. The Defendant, Drive Clean Management, LLC d/b/a Boomerang Car Wash, is a foreign limited liability company business doing business in Broken Arrow, Tulsa

County, Oklahoma, which is within the United States District Court for the Northern District of Oklahoma, and at all relevant times herein employed Plaintiff.

Jurisdiction & Venue

3. Plaintiff's cause of action is for discrimination in violation of the Americans with Disabilities Act of 1990 ("ADA"), as amended and set forth in 42 U.S.C. §§ 12101, *et seq.*

4. All of the actions complained of occurred in Broken Arrow, Tulsa County, Oklahoma, which is located in the Northern District of Oklahoma wherefore venue is proper in this Court under 28 U.S.C. § 1391(b).

Administrative Prerequisites

5. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") (Charge No. 564-2013-01450) alleging discrimination based on his disability in violation of the ADA.

6. Plaintiff's Notice of Right to Sue was issued on July 28, 2014 and received by Plaintiff on the same date. Plaintiff brings this action within ninety (90) days of receipt of said Notice.

Statement of Facts

7. Plaintiff suffers from dwarfism.

8. Plaintiff began his employment with Defendant on or around June 14, 2013, as a carwash attendant.

9. Plaintiff was hired by Defendant's Manager at this time, Hank Hamilton ("Hamilton"), even though Defendant's Chief of Operations, Dwayne Thomas ("Thomas"), told Hamilton not to hire Plaintiff.

10. Hamilton made reasonable accommodations for Plaintiff and Plaintiff was able to satisfactorily perform his job functions as an attendant.

11. Thomas retaliated against Hamilton for hiring Plaintiff by first demoting Hamilton and then firing him around the end of July 2013 or beginning of August 2013.

12. When Thomas demoted Hamilton he stated "you brought this on yourself," and pointed at Plaintiff, inferring he was being demoted for hiring a dwarf.

13. Defendant's new Manager, Amy Rinehart ("Rinehart"), took away Plaintiff's responsibilities as an attendant.

14. Rinehart reassigned Plaintiff to "marketing" where he would stand on the street corner waving at cars with a sign.

15. Plaintiff spent two to three weeks performing his new "marketing" job, but then Defendant stated they could no longer give him any hours.

16. Plaintiff filed his EEOC Charge.

17. After Plaintiff filed his EEOC Charge, Defendant offered Plaintiff work for only three hours a week.

18. Plaintiff advised Defendant that he could not afford to work three hours per week.

19. On or around August 25, 2013, Thomas called Plaintiff asking about his employment status and offered to allow Plaintiff the "marketing" job for nine hours per week, not an attendant position.

20. Thomas told Plaintiff he had been on the schedule, but he had not shown up for work.

21. Thomas told Plaintiff if he did not show up on the following Monday he would be terminated.

22. Plaintiff did not show up the following Monday because he felt he would be a target for retaliation if he did.

23. Defendant terminated Plaintiff's employment on or around August 30, 2013.

Plaintiff's First Cause of Action
ADA - Disability Discrimination (Discharge)

24. Plaintiff incorporates the above allegations herein;

25. Defendant's termination of Plaintiff's employment was solely motivated by Plaintiff's disability, being regarded as disabled and his record of disability, all in violation of the ADA;

26. As a direct result of Defendant's actions, Plaintiff has suffered, and continues to suffer, lost wages (including back, present and front pay, along with the value of benefits associated with such wages), and emotional distress/dignitary harm including sleeplessness, anxiety, frustration and similar unpleasant emotions; and

27. Defendant's conduct was willful and conducted with malice and reckless indifference to Plaintiff's federally protected rights, and therefore punitive damages are appropriate.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Theodore A. Fath, Jr., requests that he be granted judgment in his favor and against Defendant on his claim in an amount in excess of \$100,000 and further grant Plaintiff all available compensatory damages, liquidated damages, pre- and post-judgment interest, costs, attorney's fees and any other legal or equitable relief allowed by law.

SUBMITTED THIS 7th DAY OF OCTOBER, 2014.

Respectfully Submitted,

s/Rand C. Eddy

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